

AN  
ADDRESS  
TO THE  
FREEMEN  
OF THE  
STATE of SOUTH-CAROLINA.

*Containing Political Observations on the following  
Subjects, viz.*

- I. On the Citizens making a temporary Submission to the British Arms, after the reduction of Charlestown in 1780.
- II. On Governor Rutledge's Proclamation of the 27th of September, 1781.
- III. On the Mode of conducting the Election, for the Assembly at Jacksonborough.
- IV. On the EXCLUSION ACT, which cuts off the Citizens from the Rights of Election.
- V. On the Confiscation Act. VI. On the Amercement Act.
- VII. The Conclusion, with Remarks to prove the Necessity of an Amnesty, or Act of Oblivion.

BY CASSIUS.

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Supposed to be written by EDANUS BURKE, Esquire,  
one of the Chief Justices of the State of South-Carolina.

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*Who with the gen'rous rustics Sate,  
On Uri's rock, in close Divan,  
And wing'd that arrow sure as Fate,  
Which ascertain'd, THE SACRED RIGHTS OF MAN.*

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*A reverence for our great Creator, principles of humanity,  
and the dictates of common sense, must convince all those  
who reflect upon the subject, that Government was instituted  
to promote the welfare of Mankind, and ought to be  
administered for the attainment of that End.*

DECLARATION by the AMERICAN CONGRESS,  
at Philadelphia, July 6th, 1775.

“ The last right, we shall mention, regards the freedom  
of the press. The importance of this consists, besides the ad-  
vancement of truth, science, morality, and arts in general,  
in its diffusion of liberal sentiments on the administration of  
government, its ready communication of thoughts between  
subjects, and its consequential promotion of union among  
them, whereby oppressive officers are shamed or intimidated  
into more honorable and just modes of conducting affairs.”

ADDRESS of the AMERICAN CONGRESS,  
at Philadelphia, September 5th, 1774.



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TO THE  
F R E E M E N  
OF THE  
STATE OF SOUTH-CAROLINA.

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I N T R O D U C T I O N.

*Friends and Fellow Citizens,*

THE proceedings of the late Assembly held at Jacksonborough have already excited the attention not only of this, but of other States; and some of the laws then enacted are of so serious a nature, that the memory of them will last, and their consequences operate, when the authors of the measures shall be no more. By one of those laws, upwards of two hundred men who had been citizens of this State before the reduction of Charlestown, have been stripped of all their property: innocent wives and children involved in the calamity of husbands and fathers, their widows are deprived of the right of dower, their children disinherited, and themselves banished for ever from this country. And this *without process, trial, examination, or hearing*; and without allowing them the sacred right of proving their innocence on a future day. Under other acts of that assembly, a number of the inhabitants are subjected to heavy fines, some to near one third, others to one eighth, and some to a tenth part of their estate, real and personal, without better proof of crime than report and suggestions. Another act excludes from the freedom of voting or being elected to a seat in the legislature, almost a majority of our citizens. The crimes of all consist in the part which they were said to have taken after the reduction of South-Carolina by the British army.

One would imagine there is no free country upon earth, in which laws bringing such ruin on so many families, and so big with political mischief, would not have been publicly discussed before this day. But whether it be owing, that the measures have succeeded in breaking the spirit of the people, by filling every man with

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with a sense of his own danger; or that the fear of the Governor's extraordinary power, awes men into silence; or that they are indifferent about public affairs; not a man has yet undertaken to enquire into the justice or injustice of it, or ask his neighbour how far the Legislature could effect the ruin and disgrace of so many of his fellow citizens, consistently with the laws, constitution, and happiness of his country.

From every point of view in which I consider those proceedings, I am convinced it is essential to the future peace and liberty of our country, that a true judgment be formed on the matter. The people at large in whom the sovereignty of the State *should be vested*, ought to be informed whether public measures be right or wrong; and it therefore becomes the duty of every citizen to present the subject in as open and public a light as opportunity or knowledge may enable him. Under this persuasion I venture to offer a few remarks to the consideration of the publick; and I only with my talents were equal to the importance of the subject. I trust the candid, plain manner in which I shall discourse on it will answer for me, that I have no other design by it but what has been the object of my pursuit through seven years public service; that is, the liberty and peace of my country.

I must first observe, that G—R—'s proclamation of the 27th of September 1781, was the fountain from whence sprung some of those latter laws, and the forfeitures and disabilities above-mentioned. That proclamation went entirely on the supposition, that the citizens of the State who had taken protection on the fall of the country under British usurpation, had thereby not only forfeited their lives, fortunes, and the privileges of citizenship, but had also incurred the penalty of treason against the State. This was the doctrine allowed on all hands; not only laid down by the proclamation, but advanced in both houses, and I never heard it contradicted by the *judges* or *lawyers* who ought to have known better. The proclamation indeed was supposed to have restored all those who complied with the terms of it, to their lost liberties, by joining the army within a limited time.

I shall proceed to make some remarks on the supposed crime and delinquency of the people in taking protection.

### I. *On the Citizens making a temporary Submission to the British Arms, after the reduction of Charlestown in 1780.*

**T**HIS State, soon after the reduction of Charlestown, may be strictly said to have been conquered. Not only the capital, but every post throughout the country was in the hands of the enemy. The Governor who represented the Sovereignty of the State, had provided for his safety by flight, and all the Continental troops in South-Carolina were either killed, taken, or routed. The

The enemy, thus masters of the country, resolved to reduce by military force the inhabitants to obedience. And Sir Henry Clinton accordingly in the month of June 1781, issues a proclamation, " Commanding all persons whatever inhabitants of this province, (those who were in Charlestown and Fort Moultrie at the time of their capitulations and surrender, or were then in actual confinement excepted) who shall after the 20th of June next, neglect to return to his allegiance and to his Majesty's government, will be considered as enemies and rebels to the same, and treated accordingly."

Thus a military despotism was established throughout the settlements, and to complete this miserable scene of woes, the army under General Gates, and a division under General Sumpter, to whom we looked up as our deliverers, were entirely defeated. The country thus abandoned to a cruel, unprincipled foe, the people had no idea but that our independence was lost irrecoverably. And indeed the advantages gained by the enemy were so rapid and decisive, it was for some time apprehended thro' the other States, and even by many members of Congress, that Carolina and Georgia must in the end revert to the domination of Great Britain.

In this situation *necessity*, whose dominion triumphs over all human laws pointed out to our inhabitants, that as there was neither government, laws, nor army to protect them, they were at liberty to protect themselves, as well as they could. This is the law of Nature and of Nations: And all Statesmen, the best lawyers, and most eminent writers, agree, that when an invader over-runs a country, defeats the standing forces, and subverts its government, the inhabitants of such a country are justifiable to take the conqueror's protection and obey his laws; and whether the government be a monarchy or republick, it makes no difference, as the reason of the thing is the same.

In Germany and other parts of Europe, it is not uncommon for one and the same city to be taken and retaken and have different masters in one campaign. And the inhabitants of such a city, magistrates and all, who are not soldiers by profession, uniformly take an oath of allegiance to the stronger side, which oath is binding only so long as the conqueror's power lasts. And I believe we have the exclusive honour of being the first who proceeded to punish their inhabitants on account of such submission. I shall bring forward the authority of the best writers on the laws of nations and nature to prove that taking protection from a conqueror is no crime.

" Things may be brought to such an issue, says Puffendorf, lib. 7. c. 8. as shall make it not only allowable, but good and necessary to obey the ruler in possession, by whatsoever means possession was gained. As if the lawful Sovereign be reduced to such straits, that he can no longer exercise his regal office towards his people. For tho' the commands of the usurper, being destitute of legal power are not in themselves obligatory, yet it becomes

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“ becomes a wise man to consult the welfare of himself and of his  
 “ affairs, make provision against the future, and with wariness and  
 “ caution reflect on his present condition, that he may not thrust  
 “ his life and fortune into danger ; as he would do, should he by  
 “ vain obstinacy and opposition draw the usurper’s rage upon his  
 “ own head, without procuring the least advantage to his country.”  
 And further on he concludes, “ That when the prince cannot  
 “ afford his subjects due protection, nor they on the other hand  
 “ able to resist the usurper without imminent ruin, they are released  
 “ from all obligations to him, until providence shall open a way  
 “ to his restoration.” Again, “ This method must be allowed to  
 “ be lawful not only for particular subjects, but also for entire  
 “ cities and provinces, when they find no other way left for their  
 “ safety and preservation.” Lib. 8. c. 11. In support of this right  
 he quotes the case of the Petilini from Livy. This nation being in  
 alliance with the Romans, and pressed by their enemies, sent for  
 assistance. But the Romans being distressed themselves, answered,  
 “ They confessed themselves no longer in a condition to defend  
 “ their distant friends, and therefore desired the petitioners to return  
 “ home, consult for themselves, and make the best terms they  
 “ could.”

This is the law laid down by Grotius as well as Puffendorf: and  
 Vattel, a late writer of the first distinction, delivers the like doctrine  
 in the following words:

“ If a State is overcome by force, *necessity, that irresistible law,*  
 “ frees it from its first engagement, and gives it a right to treat  
 “ with the conqueror, in order to obtain the best conditions possi-  
 “ ble. If it must submit to him, or perish, who can entertain a  
 “ doubt but that it may, and even ought to chuse the first expe-  
 “ dient, *submission* ? The modern usage is agreeable to this deci-  
 “ sion : A city submits to an enemy when it cannot expect safety  
 “ from a vigorous resistance: it takes an oath of fidelity to him,  
 “ and the Sovereign of such city has no body to accuse but for-  
 “ tune.”

Vattel gives as examples the cases of the country of Zug, and  
 the city of Zurich abandoned by their Confederates in the 14th  
 century, who entered into a treaty with their enemies from  
 necessity.

This part of my subject I shall conclude with a quotation from  
 Mr. Hobbes, a writer whose authority is the more to be depended  
 on, as he lived in England in the time of the grand rebellion,  
 when England then was, as Carolina was lately, distracted  
 by a fierce war, and were persecuting each other, as the parlia-  
 ment forces, or those of the king got the better.

“ Because I find, says Hobbes, by our English books lately  
 “ printed, that the civil wars have not sufficiently taught men in  
 “ which point of time it is that a subject becomes obliged to the  
 “ conqueror, nor how it comes about that men are obliged to obey  
 “ his laws. Therefore, for satisfaction of men therein, I say,  
 “ That for him who has no obligation to his former sovereign, but  
 “ that

“ that of an ordinary subject, (*that is not a soldier by profession*) it  
 “ is then when the means of life are within the guards and garri-  
 “ sons of the enemy: for it is then he hath no longer protection  
 “ from his sovereign, but is protected by the adverse party for  
 “ his contribution. Seeing therefore such a contribution is every  
 “ where esteemed lawful, as a thing inevitable, (notwithstanding  
 “ it be an assistance to the enemy) a total submission cannot be  
 “ esteemed unlawful. Besides, if we consider that he who submits  
 “ assists the enemy but with part of his estate, whereas, they that  
 “ refuse to submit, assist him with the whole.

“ Again, when in a war (foreign or domestic) the enemy get a final  
 “ victory, so as the forces of the Commonwealth keeping the field  
 “ no longer, there is no farther protection of the citizens in their  
 “ loyalty: *Then is the Commonwealth dissolved, and every man at*  
 “ *liberty to protect himself by such courses as his own direction shall*  
 “ *suggest to him.* For the Sovereign is the public soul, giving life  
 “ and motion to the Commonwealth; which expiring, the mem-  
 “ bers are no more governed by it than the carcase of a man by his  
 “ departed spirit. For tho’ the right of a sovereign cannot be  
 “ extinguished, yet the obligation of the members may; for he  
 “ that wants protection may seek it any where.

“ Again, the obligation of subjects to the State is understood to  
 “ last so long, and no longer than the power lasts by which it is  
 “ able to protect them. For the right which men have by nature  
 “ to protect themselves, when none else can protect them, can by  
 “ no covenant be relinquished. The sovereignty is the soul of  
 “ the commonwealth, which once departed from the body, the  
 “ members do no more receive their motion from it. The end of  
 “ obedience is protection, which wheresoever a man seeketh, either  
 “ in his own, or his enemy’s sword, nature applieth his obedience  
 “ to it.” Hobbes’s Leviathan, cap. 21. 27. 29. and the Review.

Nothing can be clearer than this doctrine; and however shocking  
 it will seem to those who have kept a perpetual boasting of their  
 own virtue and clamour against such as the British did not think  
 fit to send to St. Augustine; yet this is what is good law in South-  
 Carolina as well as all the world over: All those writers whose autho-  
 rity we rely on in law-matters laying it down for law, that subjects  
 are excused and justified, and not liable to be impeached or called  
 to account for taking protection from a conqueror or usurper.

I hope I have said enough to satisfy the reader, that our in-  
 habitants did nothing more than their duty in taking protection:  
 and if they thought they could secure better treatment, or alleviate  
 their calamity by congratulations, they had an undoubted right to  
 do it. It did not shew much political wisdom, I allow; but let  
 that matter be as it will, they did not commit any crime against  
 the laws or government, for neither law nor government existed.  
 The Sovereign power was in a state of temporary death, the soul  
 was fled and departed, and nothing remained but the carcase;  
 which could no more be injured or violated by any of our former  
 citizens

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citizens taking protection, or signing a congratulation, than they could be said to commit murder by trampling on the body of a man who had been dead and buried many months.

With respect to presenting congratulations, it were easy to prove from what happened in other countries that they are by no means a true test or proof of the public sentiments, or of those who present them. Such addresses are obtained in all countries by a few designing men, and the rest by threats, terror, or a sort of impulse, follow the example. For a long time before Cromwell died he was detested by the English nation, and scarcely an honest man in it who did not wish to have him dispatched.

Yet after his death, and the nomination of his son Richard to the protectorship, which was looked on as a tyranny. "The city of London and almost all the counties and cities in England sent him addresses of condolence for the loss of his father, and congratulations on his succession to the protectorship. So little, says Burnet, do these appearances signify." This levity, this infirmity of the multitude, no statesman before our time thought in earnest of punishing. Our laws cannot do it. Lord Cornwallis himself, tho' not a man of abilities, yet has sense enough to know that if he and Clinton were in Charlestown going to be hanged, the people would rejoice and sign congratulations as they did on a different occasion.

I well know prudent men, or rather such as think themselves so, will say, that this doctrine of *Protection* ought not to be drawn into discussion, but should sleep in silence for the present. But is not the contrary doctrine believed to be law? Have not the few proclaimed to the world, and still continue to proclaim it, that the protection-men forfeited their lives and fortunes? Has not the government been seized, and its constitution subverted, by the *few* in consequence of that doctrine? Has it not set one part of the community against the other, brought ruin on many, and dishonour on us all? I should hold myself guilty of the most pusillanimous submission, were I under this conviction and to be silent on it.

For men in power to persuade the people, that they committed crimes and acted dishonourably, when there is neither crime nor dishonour in the case, is a most mischievous policy. It has the same pernicious effects on the multitude, that private scandal and defamation, has on an innocent individual. It breaks that spirit, and generous pride, which is the best guardian of publick liberty and private honour. It overwhelms the publick as well as the private mind, with conscious inferiority; degrades men in their own opinion, and renders them fit tools for the ambitious designs, and arbitrary dispositions of haughty aspiring superiors.

Whether I am right, let those judge who have carefully observed the deportment and behaviour of such of our unhappy citizens as are held under censure, for taking protection, by those in authority. The citizens who came from Charlestown in the scorching heats of August last, by a proclamation, afforded a melancholy proof,

proof, how soon oppression degrades mankind, and impresses timid, cringing habits, even on the minds of freemen.

Having proved the taking protection was no crime in the people, I shall go on to shew, that on the restoration of the republic and laws from British thralldom, the protection-men who had been our citizens before, were as fully entitled to all the rights and freedom of citizenship, as those who were detained prisoners of war, or took refuge to the northward.

Every country of which we have any account from history, has had its day of woe and affliction, by foreign invasion, or civil discord, as we have had. But in every one of them as soon as the troubles were over, and the country regained; the government returned to its antient form, and the subjects were reinstated in the participation of their rights and privileges. And this is not only agreeable to justice, but the freedom and liberty of the country would be destroyed if it were otherwise. If in a republic a *few* could set up pretensions to superior political merit, over the whole aggregate body of the people, and deprive the latter of their rights and privileges, this would be nothing more nor less than overthrowing the constitution, seizing on the liberties of the people, and setting up an arbitrary government of the *few*. The laws of nations as well as the rights of nature therefore dictate, that when a country oppressed by a foreign power regains its liberty, the citizens should be restored to all the rights and liberties they before enjoyed.

"A whole nation, says Puffendorf, cap. 6, when it hath, either  
"by its own strength, or the assistance of friends or allies, shaken  
"off an enemy's yoke, recovers its liberty and antient state.  
"And if a part of the people be recovered by the people, from which  
"they were for some time divided or torn, or by the assistance of  
"allies, they again incorporate with the old body, and return to  
"the place and rights they had before."

This authority goes to the point; but in order to make it plainer, I shall put a case: I shall suppose a nation governed by a limited monarch, invaded by a powerful enemy, and after trying the fortune of war, entirely vanquished. The Prince escapes into another State, and the subjects are obliged to receive such terms as the conqueror chuses to grant. In case this country be again recovered by the assistance of friends or allies, would it not be strange indeed, that the prince on returning, should call the conquest over his people, and their necessity to submit, by the name of treason against the government? Should he carry this notion so far as to exclude the subjects from the benefit of the antient laws, and deny to all the rights of citizenship, except to his friends or adherents, and such whose captivity prevented them from following the example of the rest, or whose residence on the frontier afforded an easy removal into another country; would not this procedure be considered as seizing the government and setting up his own will to reign instead of laws? If there was a spark of freedom left in such a

country, they would ask what his design and pretence for proclaiming to the world that his subjects had committed treason, and forfeited, without trial or conviction, the rights and protection of the antient laws? To cut this matter short, was not this exactly the course taken by the late G—— R——, who acted only as minister of State for our Republic? Did he not issue his proclamation to make the people and the nations around believe, that by a temporary submission to a conqueror who had the power of life and death in his hands, they had incurred crime and dishonour? Has not himself and a *few* others who were not in the country while the war raged, nor lent the least aid to drive out the enemy, bereaved the citizens of their rights and privileges, and by the terror of dictatorial power reduced the whole State to a condition of vassalage, without any other redemption than dragooning into six months military service, by way of punishment and expiation?

## II. *On Governor Rutledge's Proclamation of the 27th of September, 1781.*

A Measure so singular as this is must be produced by some uncommon motive. It is, however, one of those things, which the more a man will think of, the more will he detest it. For it is calculated for no other end but to sow the poisonous seeds of faction and party, to disgrace the middling and lower class of our citizens, and throw the whole weight and powers of government out of the people into a few families. G—— R——'s proclamation, and the plans which he carried last assembly, would, unless unriveted by a future one, fasten at one blow in this country, a fierce and jealous aristocracy, which has been gaining ground for seven years past. Miserable is that republic whose citizens want discernment to penetrate through such designs, or are afraid to expose them!

For some time before the battle of the Eutaw Springs, almost all our citizens without the lines of Charlestown, and with few exceptions, all within, worried by the tyranny of the British army, held them and their cause in the utmost detestation. The victory obtained in that action proved a death-warrant to the tory interest in this State; and the capture of the British army under Lord Cornwallis following on the heels of the event, roused the few tories there were as from a dream; and they saw clearly they had hitherto only deluded themselves in thinking this country would be conquered. And those who from zeal, levity, or necessity, adhered to the enemy after the fall of Charlestown, employed all the means in their power to pave the way to a reconciliation. This was not difficult for those who had not personal enemies among us; for General Greene wanted supplies, the town abounded with merchandize,

andize, of which our old citizens found means to send out large quantities. The very adventurers who followed the British army to South-Carolina became our friends, and testified their zeal for us on many occasions.

This I believe was the true state of parties the latter end of the year 1781. Happy would it have been for this country if the servants of the public could have disentangled their minds from the resentments and party-rage which prevail in civil wars! A proclamation then framed upon principles of wisdom and humanity, would have had a happy tendency to bury in oblivion what was past; to extinguish from the minds of men, a sense of late injuries; to unite the affections of all; and restore the country to order and tranquillity.

The proclamation of September 27th, as I observed before, went on the Governor's idea that the great body of the people who had taken protection had thereby forfeited their lives, liberty, and property. He takes upon him to offer pardon to every one of them who should join our standard in 30 days, and serve 6 months in the militia, as common soldiers; excepting from this benefit, those who were banished the State in the beginning of the troubles; the congratulators, and such as held commissions civil or military on the 27th of September, or were then with the enemy. I shall say nothing of the good or bad policy of excluding such a number of citizens as this exception comprehended, admitting he had the power he pretended to. However on the 17th of November he issued a second proclamation, extending the benefits held out by the former under the like terms.

As the capture of Cornwallis and his army was known to the Governor when this proclamation came out; as the British troops had absolutely lost their courage with their loss at Butaw, and the Pennsylvania Line was on the march from York-Town to our assistance: When this, and the state the country was in at that juncture, is considered; I leave the reader to judge, whether the proclamation was not calculated rather for creating mischief than for raising a force. For it laid all who neglected or refused, not only under a stigma and reproach, but under such disabilities as degraded them below the rank of freemen.

Obliging the whole country that had taken protection to turn out and serve six months in the militia, was the greatest oppression imaginable; and the contriver of it well knew, as those do, who now drive down the measure, that it was commanding what was absolutely impossible. Men are generally so embarrassed with inconveniences of one sort or another, that there is no society on earth, the aggregate body whereof could all quit their families and homes for six months. In our case, not to mention how much agriculture would suffer by such emigration, the heads of those families who resided within the enemy's range, were peculiarly circumstanced. They were no doubt called on by the feelings of fathers,

fathers, husbands, or protectors to stay and afford the feeble protection they could to their families, or avert the distress or ruin that would ensue; if they joined our army, which at that time had not the power of protecting them.

Ordering them out, therefore, without regard to local situation, sickness, or other distress, was an extravagant act of power. Whether they resided within or out of the enemy's garrison or guards; whether a man's wife or little ones, or the property the British had left him un plundered, were in or out of the enemy's reach: All this was nothing; they must abandon the whole to the rage of an unprincipled, revengeful enemy; and sally forth, like Don Quixote, setting British guards and parties at defiance, in quest of adventures on the report of a proclamation; and what perhaps was more mortifying; they must humble themselves and supplicate for mercy as criminals, at the feet of a man who a little before was a fellow citizen, no more than on a footing with themselves.

I conjure any sensible honest man to tell me, if this was acting the part of a magistrate, framing regulations for the ease and convenience of a people, over whose happiness he was appointed to preside? In the high station he was, ought he not to have looked on the people at large as children of the republic; whose only crime was a misfortune that admitted of no alternative? Instead of adding to the list of their calamities, from British oppression, ought he not to have comforted them, and rather to palliate, or cover over any stain of dishonour, if any there was, than lay them under the condemnation of treachery to their country? this proclamation was like putting the citizens in a Bear-skin, and then worrying them; or according to a more just comparison made by General Gadsden on the Confiscation Bill; he said it was like an *Auto de fe*, a sort of proceeding used in Portugal against Heretics, where they are dressed in frocks painted over with figures of fiends and devils, to excite a horror in the multitude against them.

### III. *On the Mode of conducting the Election for the Assembly at Jacksonborough.*

I shall proceed to examine the mode of conducting the elections in the latter end of 1781, for the Assembly at Jacksonborough; as I think it of consequence that the public should be acquainted with the nature of it. The Governor resolved to convene the Assembly in January; and whether the measure of calling them at all, at that time, will turn out a blessing or a curse to us, time will discover. The writs of election were accompanied with *printed instructions* to the returning officers, not to admit any person to vote, but such as obeyed his extraordinary proclamation. The returning officers had also further orders from the Governor to chuse particular men whom he named, and according to such nomination they were chosen.

Our

Our Constitution or Charter or Liberties ascertains the qualification of voters, and secures this valuable privilege by the following clause:

“ Every free white man who has attained to the age of 21 years, and hath been a resident and an inhabitant in this State for the space of one whole year, and hath freehold of fifty acres of land, or a town lot, and been seized of it six months previous to the election, or paid a tax, or was taxable six months previous to the election in a sum equal to the tax on fifty acres of land, shall be deemed qualified to vote for, and be eligible, &c.”

Thus the Constitution gives to every such citizen a *participation in the Sovereignty of the State*, which right and share neither Governor nor both Houses can take away without establishing a tyrannical government on the ruins of our Liberties. And at any rate the Assembly could not alter the Constitution nor any part of it without ninety days notice by the—section. For the Governor therefore to assume authority to deprive some citizens of this right and give it to others, is a flagrant instance of tyranny, and is scarcely to be equalled in any country that pretended to freedom. The privilege of voting for those who are to make laws for us, is a right so inherent in every citizen of our State, that the Governor or Legislature, who pretends under any condition or limitation to deprive him of it, and then return it as a matter of favour, actually plays the tyrant by so doing: It is *at once vesting the government in a few independent of the whole: An overt-act to change the nature and form of our Constitution: Not an injury to one or a few individuals, but I aver it to be what in every Republican Government is called crimen læsæ libertatis, high treason against the sovereignty and liberties of the people.*

“ It is essential to the being of a parliament, says Blackstone, that elections should be absolutely free. Therefore all undue influence on the electors is illegal and strongly prohibited; Mr. Locke ranks it among those breaches of trust in the *executive magistrate*, which according to his notion amount to a dissolution of the government if he employs the force, the treasure and offices of society to corrupt the Representatives, or *openly to pre-engage the electors, and prescribe what manner of persons shall be chosen.* For thus to regulate candidates and electors and *new model the ways of election*; what is it, says he, but to cut up the government by the roots, and poison the very fountain of public security.” Blackst. vol. 1. p. 178.

The right of electing those who act as public trustees in the legislature is by our constitution so vested in the citizen, so personal to him, that he cannot surrender or resign it, any more than the substance of his body can part with its shadow; nor can it be forfeited until he be convicted of some notorious crime, on a fair trial by his peers. *It is indefeasible and hereditary*, and the Governor with all the authority which an act of Assembly could give him, was only an agent or trustee, who could no more abolish this

fathers, husbands, or protectors to stay and afford the feeble protection they could to their families, or avert the distress or ruin that would ensue; if they joined our army, which at that time had not the power of protecting them.

Ordering them out, therefore, without regard to local situation, sickness, or other distress, was an extravagant act of power. Whether they resided within or out of the enemy's garrison or guards; whether a man's wife or little ones, or the property the British had left him un plundered, were in or out of the enemy's reach: All this was nothing; they must abandon the whole to the rage of an unprincipled, revengeful enemy; and sally forth, like Don Quixote, setting British guards and parties at defiance, in quest of adventures on the report of a proclamation; and what perhaps was more mortifying; they must humble themselves and supplicate for mercy as criminals, at the feet of a man who a little before was a fellow citizen, no more than on a footing with themselves.

I conjure any sensible honest man to tell me, if this was acting the part of a magistrate, framing regulations for the ease and convenience of a people, over whose happiness he was appointed to preside? In the high station he was, ought he not to have looked on the people at large as children of the republic; whose only crime was a misfortune that admitted of no alternative? Instead of adding to the list of their calamities, from British oppression, ought he not to have comforted them, and rather to palliate, or cover over any stain of dishonour, if any there was, than lay them under the condemnation of treachery to their country? this proclamation was like putting the citizens in a Bear-skin, and then worrying them; or according to a more just comparison made by General Gadsden on the Confiscation Bill; he said it was like an *Auto de fe*, a sort of proceeding used in Portugal against Heretics, where they are dressed in frocks painted over with figures of fiends and devils, to excite a horror in the multitude against them.

### III. *On the Mode of conducting the Election for the Assembly at Jacksonborough.*

I Shall proceed to examine the mode of conducting the elections in the latter end of 1781, for the Assembly at Jacksonborough; as I think it of consequence that the public should be acquainted with the nature of it. The Governor resolved to convene the Assembly in January; and whether the measure of calling them at all, at that time, will turn out a blessing or a curse to us, time will discover. The writs of election were accompanied with *printed instructions* to the returning officers, not to admit any person to vote, but such as obeyed his extraordinary proclamation. The returning officers had also further orders from the Governor to chuse particular men whom he named, and according to such nomination they were chosen.

Our

Our Constitution or Charter or Liberties ascertains the qualification of voters, and secures this valuable privilege by the following clause:

“ Every free white man who has attained to the age of 21 years, and hath been a resident and an inhabitant in this State for the space of one whole year, and hath freehold of fifty acres of land, or a town lot, and been seized of it six months previous to the election, or paid a tax, or was taxable six months previous to the election in a sum equal to the tax on fifty acres of land, shall be deemed qualified to vote for, and be eligible, &c.”

Thus the Constitution gives to every such citizen a *participation in the Sovereignty of the State*, which right and share neither Governor nor both Houses can take away without establishing a tyrannical government on the ruins of our Liberties. And at any rate the Assembly could not alter the Constitution nor any part of it without ninety days notice by the—section. For the Governor therefore to assume authority to deprive some citizens of this right and give it to others, is a flagrant instance of tyranny, and is scarcely to be equalled in any country that pretended to freedom. The privilege of voting for those who are to make laws for us, is a right so inherent in every citizen of our State, that the Governor or Legislature, who pretends under any condition or limitation to deprive him of it, and then return it as a matter of favour, actually plays the tyrant by so doing: It is *at once vesting the government in a few independant of the whole: An overt-act to change the nature and form of our Constitution*: Not an injury to one or a few individuals, but I aver it to be what in every Republican Government is called *crimen læsæ libertatis*, *high treason against the sovereignty and liberties of the people*.

“ It is essential to the being of a parliament, says Blackstone, that elections should be absolutely free. Therefore all undue influence on the electors is illegal and strongly prohibited; Mr. Locke ranks it among those breaches of trust in the *executive magistrate*, which according to his notion amount to a dissolution of the government if he employs the force, the treasure and offices of society to corrupt the Representatives, or *openly to pre-engage the electors, and prescribe what manner of persons shall be chosen*. For thus to regulate candidates and electors and *new model the ways of election*; what is it, says he, but to cut up the government by the roots, and poison the very fountain of public security.” Blackst. vol. 1. p. 178.

The right of electing those who act as public trustees in the legislature is by our constitution so vested in the citizen, so personal to him, that he cannot surrender or resign it, any more than the substance of his body can part with its shadow; nor can it be forfeited until he be convicted of some notorious crime, on a fair trial by his peers. *It is indefeasible and hereditary*, and the Governor with all the authority which an act of Assembly could give him, was only an agent or trustee, who could no more abolish  
this

this right of the principal or people who appointed him, than a man who is only attorney or manager of an estate, can destroy or alienate the right of his employer. The manager exercising an act of ownership, such as selling or converting it to his own emolument, makes void his commission. The power of the trust returns to the owner, and the other is responsible for his breach of it. So the Governor seizing on the freedom of election, which alone constitutes the freedom of the people, was destroying all legal authority in himself. Such an act of power was a *felio de se*; a murderer of itself. It was no longer the act of the law, but of the usurper; and *packing an Assembly* in which he confirmed all his doings, was making the matter ten times worse; it was employing the *forms* of parliament, of law and constitution to rivet his usurpation.

As to the Governor's extraordinary powers in the recess of the Assembly, "to do and execute whatever he thought necessary for the safety of the State." On due consideration of this clause, I believe no lawyer will be so hardy as to deny, that this power only authorised him to support, not to overturn the charter of our liberties and fundamental laws of the State, and by this precedent expose us in future to all the mischiefs of arbitrary power.

Encroachments on public liberty commence in all republics with plausible pretences of promoting some public good, or remedying some evil. In any government where there is the least spark of freedom, *open and barefaced tyranny* can never insinuate itself. It is obliged therefore like the original tempter in Paradise, to assume a shape which may conceal its subtilty, and the story of every nation affords examples of this truth. In the instance before me, the pretence was "a necessity for excluding from votes the disaffected or protection-men, to prevent a tory influence in the Legislature." I look upon this to be a shallow pretence: It also amounts to a calumny on the great body of the people, who hated the British government as much, and loved *Republican equality* much better than some people I could name\*. The political sentiments of the public were such, and the hatred to the British so universal, that had a free, impartial election prevailed, there would have been, not only no danger, but the settlement of the government, and peace of the country, would in all probability have been consulted much better than it was. I believe as much as I exist, that it was a great and public misfortune, that the Governor returned to the country, or that Major Hyrne, whom I regard by the by, as a man of great merit, exchanged the Charlestown militia. Had they remained where they were, a *convention of the people* would have been held

\* I have been told that certain gentlemen frequently make it their business in company, to propagate a notion, that the people of this State are not capable to govern themselves, and that the constitution should be changed into an aristocracy, or the government of certain potent families. Does not this let the Cat out of the bag, and account for some late proceedings?

held as soon as things were ripe for it: Elections would have been made agreeable to the constitution; something like temperance and justice might have prevailed; and the State at this time might have been in freedom and serenity; instead of the arbitrary measures, the spirit of faction, and discontent, ruin and misery of families, which like a dismal gloomy mist hangs over the land at present.

At any rate we could not have been worsted, for anarchy or no Government is far preferable to an arbitrary one. How different the policy adopted in New-Jersey, and other parts of America, where the enemy for a while domineered, and the people uniformly took a temporary protection! Not one of them affords an example of a public servant fixing on the tyranny exercised by the enemy over his countrymen, as a mask or pretence for accusing them of disaffection, and taking the government out of their hands. Not one of them trampled, as we have done, on *the charter of their liberties or constitution*, under colour of guarding against tory influence.

This influence the State of Jersey apprehended a few months ago; but what did they do? Not to open a theatre for the citizens to worry and persecute each other, under distinctions of the *virtuous few*, and *protection-men*; they only passed an act substituting the mode of giving in their votes at the elections, openly and publicly, instead of balloting as formerly.

How the legislature could make this proclamation of the Governor the ground-work of all their proceedings, cannot be accounted for, but by considering that such was his influence, and the management of his party, that it became dangerous to make any opposition. The great majority of the Assembly were men who had taken protection; but who from local situation were enabled to join the army, or find a substitute.

What a strong impression of horror of the Governor's arbitrary power must those members have upon them, when they gave their votes for degrading their fellow-citizens from the rights of freemen, only for doing what they did themselves, making a temporary submission to a conqueror! Some gratified the workings of revenge, and others some other paltry passion. But they were all mere tools to carry on the business of usurpation on the freedom of their country, and raise a few families to a height of power as would one day crush them and their posterity.

#### IV. On the Exclusion Act, which cuts off the Citizens from the Rights of Election.

The following words of the preamble of the Exclusion Act are worth quoting:

“AND WHEREAS it is inconsistent with justice and policy that any of the persons who are excluded by the Governor’s

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“ verner’s proclamation from pardon should be admitted to vote  
 “ for, or be eligible as members of the Legislature; be it enacted,  
 “ that no person by the said proclamation excepted, shall be en-  
 “ titled to vote for, or be eligible as members of either branch of  
 “ the Legislature.”

This Act of Assembly supposes with the Governor, that all who did not come in within the time specified by the proclamation, and serve six months, had forfeited their liberty, and that such as obeyed, were restored to lost freedom. But the gentlemen of both Houses forgot, that the citizens of South-Carolina had to thank the Governor for nothing: Their rights and liberties were founded on something else besides parchment, or paper, or a proclamation; they were built on the laws of nature, and the fundamental laws of the State, and they were supported by the valour, and cemented by the blood of those brave men who fought, bled, and died in the cause of freedom, not for the usurpation of a few, but for the liberties and happiness of all. And yet this wretched country at this very hour, when peace and happiness should prevail, is split into a faction of two classes of men; the one sort, a set of mongrel freemen, begot between G—— R—— and a proclamation, or his party in the Assembly; or holding the privilege of voting because they could advance fifty or sixty guineas to procure a substitute. The rest are aliens in the government, divested of every privilege we have been contending for these seven years past, and to be *ruled and taxed without their consent*. Even the unfortunate citizens of Charlestown, who tho’ they were not *six months-men* under G—— R——’s proclamation, yet were actually *six years-men* like common soldiers, before the reduction of the town. Their zeal for the cause, and courage in supporting it, was often proved on dangerous and honourable trials: They were all taken in defending it; and the great bulk of them bore hunger, insults and persecution before they would submit even to a conqueror; yet are their services not only forgotten, but they have been abused and worried as if they were convicts, and are now little better than vassals in their own city, except a few of the richer sort, who could buy the freedom of voting; which it seems before this last general election was let to sale as it were with an OYEZ. Gold, it appears, with all their pretended fears of tory influence can work a miracle, by making a man a whig, and buy a right of voting or being elected. Is not this like the coming of the day of judgment to our freedom? when the right of election, to keep which chaste and unspotted, we went to war with Great Britain, is now, like a public strumpet, to be embraced only by him who can pull out his guineas, and advance a mercenary reward?

I have now done with the proclamation and election business; and here I must declare, that I can lay my hand on my heart, and say, that I entertain no personal dislike or prejudice to J—— R——. It is not the man I censure but the measure. Probably any other citizen with the power of doing what he pleased, would  
 have

have acted no better; for supreme authority is so intoxicating to human nature, that even the good are misled by it. The aggrandisement of his family, and perpetuating power in it; or being at the head of an *aristocracy*, is of far greater consequence to an able, ambitious man, than public freedom. South-Carolina is not the only place in the world where a first-rate citizen, of a guardian of his countrymen's liberty, turned an invader, and subverted it, under pretence of preserving it.

V. *On the Confiscation Act.*

I SHALL now enter on the Confiscation Act; make a few remarks on the Amercement Law; and conclude with endeavouring to prove that an Act of Amnesty and Oblivion is the only means for restoring order, tranquility and happiness to our common country.

The principal difficulty I meet with on a subject where so much may be said, is to confine myself within the narrow compass I proposed.

It is impossible not to feel distress when we reflect on the miseries which each party in a civil war, inflicts on the other as they become uppermost. The cruel oppressions of the British, particularly the personal insults and outrage we suffered from their officers, after the fall of the country, is enough to make a man shudder.

Their treatment was so extravagantly outrageous, that no description will ever give a just idea of it; and to myself who was a witness and a sufferer, it appears like a dream, and almost incredible to me. Their cruelty to the garrison; their violation of the capitulation; their sequestration and plunder; their banishing the tender sex, our wives, and children, to a distant country, merely to gratify malice, as a days journey would have set them down amidst their friends in their own country: During all this scene of violence and revenge, we ourselves never ceased to make the most tragical complaints, and calling heaven and earth to witness and avenge the injustice of our enemies; and yet no sooner did Providence turn things in our favour, and restore to us our country, than instead of thinking how to settle the peace and happiness of it, we took the quite contrary way, and looked about for means of doing vengeance in our turn, by way of retaliation. No sooner did we cease to fear and suffer, than our next endeavour was to make others fear and feel misery, as if it was necessary either to be suffering ruin or doing mischief. In thinking on these bitter calamities which men are so ingenious in contriving for each other, he must be more or less than man who cannot feel compassion and sorrow for the unhappy lot of human nature, and cry out with Shakespear,

*Merciful*

*Merciful sweet Heaven !*

*Who rather with thy sharp and sulphurous bolt,  
Splitst the unwedgeable and knarled oak,  
Than the soft myrtle. O! but man, proud man,  
Drest in a little brief authority,  
Most ignorant of what he's most assured,  
(His glassy essence) like an angry ape  
Plays such fantastic tricks before big Heaven,  
As make the angels weep.*

Our act of assembly which banishes so many citizens, after reducing their families \* to beggary, *without bearing*, is perhaps the most furious proscription of which we have any account in all history. Sylla, the Dictator, by virtue of his extraordinary powers, to be revenged on the party in opposition, and enrich his own adherents, banished more citizens, though he took not perhaps half the property we did. He disdained however to do it under pretence or colour of law and constitution; he did it as Lord Cornwallis sequestered our estates, and banished our families, by dint of military force, at the head of an army devoted to him.

In the civil discord and factions of the small republics of Greece, the party which was uppermost sometimes banished the leading men on the other side. But this proceeding was always done in a mobbish way, or by force of arms. But our Assembly very peaceably, under the mask of justice, and under the forms of parliament, condemned the citizens in violation of the spirit and substance of both. No crime alledged; no one article of charge given in against any of them; nor does any such accusation appear on the journals of either house at this moment. Before they heard of it with any certainty, the law was passed and their doom fixed. At the time the Assembly was taking his property from the citizen, which the State should secure for the maintenance of his children; at the instant he was condemned to utter ruin and infamy, and put to a political death; the unhappy man was in Charlestown, with his wife and family; perhaps struggling under the pressure of necessity in getting them common necessaries, or suffering under British

\* Beccaria makes the following remarks on confiscation: "The law which ordains confiscations, sets a price on the head of the subject; with the guilty punishes the innocent; and by reducing them to indigence and despair, tempts them to become criminal. Can there be a more melancholy spectacle, than a whole family, overwhelmed with infamy and misery, from the crime of their chief? a crime, which if it had been possible, they were restrained from preventing, by that submission which the laws themselves have ordained."

British tyranny; and his little property going for a trifle, under the despotic orders of a military tribunal. This was the case with many of them.

And thus, a report or idle story, an old grudge, revenge, or malice, supplied the place of legal accusation, of evidence, of Judge and Jury.

The injustice of this measure is so enormous, that the endeavouring to prove it, is like proving that the Sun now shines at noon-day. Hearing the accused, and giving him a chance to defend himself, is the first and most sacred rule of justice. All sorts of laws, civil and military, laws of parliament, courts-martial, and others, hear proof and defence; and any tribunal that refuses to hear proof, refuses to do justice; and must thereby suffer a ruin of character, and bear an eternal stigma and reproach on the face of its proceedings.

According to Magna Charta, which is in force in this State,  
 "No man shall be disinherited, nor put out of his franchises, or  
 "freehold, unless he be duly brought to answer, and before-judg-  
 "ed by due course of law, if any thing be done to the contrary,  
 "it shall be redressed and holden for none."

By the———clause of our constitution, or charter of liberties,  
 "No freeman ought to be taken or imprisoned, or dis seized of his  
 "freehold, liberties or privileges, or outlawed, or exiled, or in  
 "any manner destroyed, or deprived of his liberty or property,  
 "but by the judgment of his peers, or the law of the land."

It is needless to observe that the liberty of the people through the other States, are secured against arbitrary power in the same manner, by their respective constitutions. All of them have passed laws of banishment and confiscation against some of their dangerous citizens; but every one of them appointed a long day, and public notice was given in the prints, to render themselves for trial.

Nor did they make any distinction, whether the parties were within the enemy's lines at New-York, or elsewhere. The legislature of Pennsylvania, passed a *Second Act*, for giving a further time to certain of the exiles, who were said to be in England, and supposed to have been out of the reach of the former proclamation; and accordingly this second law was notified in the prints. I am credibly informed that the State of Maryland extended to their exiles, three years to come in and shew their innocence. In short we are the only State in the Union, who ran blindfold into this irregular business, without hearing their defence or giving them a future day to make it; except the State of Georgia who improved on our example; but it seems are now repenting of it.

The drivers of the confiscation and other acts, may attempt to justify the late proceedings from the Parliamentary history of the House of Lords in England: The nation whence we descended; whose code of laws we in general made use of, and whose constitution of government we have copied as nearly as our circumstances will admit. If in the whole history of that people, the measure

measure of attainting without a hearing, cannot be supported; then must it fall to the ground: for as to the justice, reason, or policy of it, the mind of man must revolt at it.

I do aver it to be a law of Parliament, "That on all bills of attainer, the accused do appear and put in his answer;" and the history of England affords not a single instance of an attainer, that was grounded upon *general charges*, without examination and hearing, but hath been universally branded with marks of detestation, by the lawyers and historians of that nation, and is at this day, considered rather as a national reproach, than a precedent for imitation. It is true their parliament have been too often led by the furious heats of civil war, or the influence of arbitrary rulers, into acts of attainer without a hearing. But they have not only been execrated, but almost uniformly reversed by act of Parliament, for the injustice of them; as I shall shew presently. In moderate reigns, and when arbitrary power did not prevail, bills of attainer in Parliament were conducted according to maxims of justice, or *secundum allegata & probata*: That is, the accused was responsible only for such crimes as were *alleged and proved* against him; if he was in any part of the king's dominions, and forth coming, he had notice to appear, or was legally arrested; if he absconded, then they proclaimed a day for his appearance, which if he observed not, they proceeded to attaint him.

On the bill of attainer against the Earl of Clarendon, [Lords Debates, Vol. I. &c.] he was so generally obnoxious to all parties, that he did not think it safe to abide by the event, but he fled his country to Holland. On this the house sent a message to the king to issue a proclamation for his appearance, and afterwards the charges of impeachment against him were enquired into, and referred to the opinion of the Judges whether they were criminal or not. This is the law, this the mode of proceeding in the British Parliament, except where law and justice were trampled on by tyranny and oppression.

I should have observed, that bills of attainer were never intended by the English constitution, but as the ultimate resource upon extraordinary occasions: The design of them was excellent; not to destroy mechanics and people of obscure condition, such as our act of attainer is full of; but bills of attainer was originally instituted to call to a severe reckoning, *Governors and Ministers of State*, who, of public servants, turned public enemies; and were by the influence which their very abuse of power gave them, grown too big and weighty for Judge and Jury to deal with.

According to Judge Blackstone, this, and no other, was the true intent of bills of attainer. "For though in general, says he, the union of the Legislature and judicial powers ought to be most carefully avoided, yet it may happen that a subject intrusted with the administration of public affairs, may infringe the rights  
" of

*"of the people, and be guilty of such crimes as the ordinary magistrate, either does not or cannot punish."*

Blackstone's Commentaries V. iv. P. 258.

I shall leave the reader to apply the quotation as he chuses, and go on to produce a few cases on attainders.

In the beginning of the reign of Edward III. Roger, Earl Mortimer,\* was condemned and executed without trial. But this attainder was reversed by Act of Parliament for this reason, "because he was not brought to judgement according to the course of law."

1st. Ed. 3. The like happened to Edmond, Earl of Arundel; but in the 4th of this reign, his son petitioned Parliament, setting forth, "that the proceedings were contrary to Magna Charta, and insisting he should have been tried by due course of law." And he was restored in part; and an act of reversal passed the 28th of this reign, "declaring that the statute by which he was attainted, was void and null."

4th. Ed. III. Sir Simon de Beresford, Materevers, and others were condemned to death without trial or examination, for killing Edward II. and his uncle. But the 19th of the same reign, a writ issued to suspend the judgment against Materevers, for this reason, "because it had been illegally passed."

In the reign of Charles 1st, the Earl of Stafford was attainted by Act of Parliament, but he was allowed to put in his answer, and was heard before the House of Lords. However, though the charges against him, amounted not to treason or felony, he was condemned and executed through party malice and revenge; but in the next reign his attainder was, for the injustice of it, reversed by Act of Parliament, in which was a clause to this effect, viz. "That the said act of attainder against Earl Stafford be obliterated from the journals of both houses, that the same be not visible in after ages, nor used as a precedent against any person whatsoever."

For the act of attainder passed against Sir John Fenwick, William the IIIrd. was branded by the British nation, because he was attainted without a witness; whereas an act passed that very Parliament requiring two witnesses in cases of treason.

"It is impossible, says an author of a treatise on penal laws, to apologize for the many bloody stains we find indelibly fixed upon English history. One of Henry VIII's Parliaments, attainted the Countess of Salisbury, the Marchioness of Exeter, and others, *without any trial or citation to appear, or without better proofs than the suggestions of the wretched sycophant Cromwell, (his minister.)* This instrument of regal tyranny, fell a sacrifice to the same iniquitous measures himself. He was some time afterward attainted by the same Parliament, and without trial,

\* Lord Coke says they indicted him, and not being able to proceed that way, "Resolved to ruin him by Attainder."

"examination

"examination, or evidence, condemned to death and executed." Principle of penal laws, c. 5.

My Lord Coke's remark on Cromwell's attainder without trial, is thus:—*Auferit oblivio, si potest, si non utcumque silentium tegat. — Let the transaction be forever buried in oblivion, if possible; if not, conceal it as well as we can.* These cruel attainders are also censured by Bishop Burnet, *Hist. Reformat.* "Such bills," says he, cannot be enough condemned; for they were a breach "of the most sacred and unalterable rules of justice."

The cruelty of this Parliament in condemning the subjects without trial or examination is also branded with infamy, by the historians, Hume, Rapin, and those who went before them. To strike a blow of vengeance under the mask of justice, is the most to be execrated of all iniquity; and the historian who joins to a clear head, a good heart, never fails to deter posterity from such deeds by painting them in proper colours. Mr. Hume in the Countess of Salisbury's case, observes; "Henry resolved to proceed against her in a more summary and more tyrannical manner; he found that her offences could not be proved, or that she could not by law be subjected to such severe punishment as he desired to inflict on her. And for that purpose he sent Cromwell, who was obsequious to his will, to demand of the judges whether the Parliament could attain a person who was forth-coming without giving him any trial, or citing him to appear before them. The Judges replied it was a dangerous question, and that the high court of Parliament ought to give examples to inferior courts, of proceeding according to justice.—No inferior court could act in an arbitrary manner, and they thought the Parliament never would.—Being pressed to give a more explicit answer, they replied, that if a person were attainted in that manner, the attainder after could never be brought in question, and must remain good in law. Henry learned by their decision that such a method of proceeding, though the contrary to all principles of equity, was yet practicable."

In his account of Cromwell's fate he goes on. "Immediately after a bill of attainder was framed against him, and the House of Peers thought proper, without trial, examination, or evidence, to condemn him to death. The only circumstance of his conduct by which he seems to have merited this fate was, his being the instrument of the king's tyranny in conducting the like iniquitous bills in the former sessions against the Countess of Salisbury and others."

The few quotations I have made need no comment. Every case I have given runs parallel to that under consideration, and goes to prove the irregularity of the late proceedings.—They shew what a clamour the illegal condemnation of even one subject makes in a nation that pretends to freedom. And that no Parliament was ever understood by any sound lawyer, or good historian, to have a lawful power to destroy the citizens without trial or examination.

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It is so cruel and unjust in its nature, that it can never be made lawful by an Act of Parliament or of Assembly, any more than theft, adultery, or murder can.

But condemning without hearing is not the only objection against our late proscription; it is what the lawyers call an *ex post facto* law; which even in arbitrary governments is reckoned tyranny. An *ex post facto* law is such a law as is made *to day*, to punish the action of *yesterday*, tho' yesterday's action was innocent. A man for instance takes a protection from a conqueror, who is in possession of the country, or signs a congratulation; this, I say, could not be punished by any law of *our* State on a public and fair trial. To bring in a retrospective act therefore, on purpose to ruin him, is an *ex post facto* law. It first makes the crime out of nothing, or which is next to nothing, out of appearances: and afterwards ordains a punishment as revenge or caprice may dictate. It requires some reflection to see into the mischiefs of such laws. But all lawyers agree, "that to punish for a fact done before there was a law to forbid it, is not, properly speaking, a punishment, but hostility; not the penalty of the law, but the outrage of an enemy. For before the law was, there could be no transgression."

Against laws so destructive all moderate governments have armed themselves: Most of our Sister States have done it expressly by their Constitutions. In the Declaration of Rights of the State of Massachusetts-Bay, it is enacted, article 24, "That laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the principles of a free government." Article 25, "No subject ought in any case, or at any time to be declared guilty of treason or felony by the Legislature."

Other States are guarded by similar laws, and the spirit of our own, if attended to, forbids the use of them. For if there existed a country in which they were frequent, it must be governed by the fierce passions of malice and revenge, and not by justice and equity.

There are many weighty reasons why a Republic should be more cautious than any other form of government, not to transgress their laws and constitutions by arbitrary measures. A popular assembly, not governed by fundamental laws, but under the bias of anger, malice, or a thirst for revenge, will commit more excess than an arbitrary monarch\*; The extravagant tyranny of Alexander, Nero, Herod, Henry VIIIth and others, are well known.

But a popular assembly acting in the different characters of Legislators and judges, who proceed to confiscation and banishment;

\* In Athens the citizens went into a faction about a division of corn. Party-rage was carried so far, that the stronger side, actually sold 5000 of their fellow-citizens as slaves in the public market. This is the only case that I recollect in history which exceeds the late disfranchising of our citizens.

ment; to name names; to put in personal enemies, † *and keep out friends*; will give more loose to malice, avarice, or revenge; commit more *injustice and glaring partiality*; and differ in outrage from one tyrant, as one fire-brand is inferior to many hundreds lighted together, and blown up by a fierce gale. Such deviations from justice, moderation and temper, would fix disgrace on the very name of a republic.

In answer to this it will be said, that the excess of those powers lately exerted by the legislature, can never be formidable, but to the enemies of the republic; and that nothing can be too severe for the tories. "Who can find fault with severity of laws against men who were foremost in supporting British tyranny?" Why not give them a hearing, I say? They formerly took an oath of allegiance to the State; and admitting they were guilty of the greatest crimes, they were so far entitled to its protection, that they had a clear right to be heard in their defence.

Unthinking are those who imagine that one arbitrary exertion of power will not open a door for many others! There is hardly an instance in history of a law made to be revenged on enemies, but that very law was brought in as a precedent to destroy friends; and the thing is quite natural. For if the legislature can, without ceremony, or forms of law, seize the property, or banish the person of the meanest, or worst member of society; what I pray can hinder their stripping or banishing men of character and virtue? If so obscure a man as *Paddy Hinds*, or so obnoxious a one as *Bob Williams*, can be banished, amerced, or put to death without trial, hearing, or examination; whence comes security to you, or even to J—— R—— himself.

He, and other citizens may blind and flatter themselves with hopes that no mischiefs can accrue from such tyrannical proceedings. But as factions and revolutions have been the lot of every republic that we ever heard of, our government will no doubt have its share of them.

Time which changes all things, may bring matters about, so as to turn the tables against the very men who were foremost in driving down those laws; for after this precedent I see nothing they have to depend on, but faction, cabals, or influence in the legislature: And the sheets on which those laws are written, may wrap in winding-sheets some of their descendants.

I observed before, that history abounds with examples which prove, that arbitrary laws made to punish obnoxious people, have been generally used afterwards, as precedents to the destruction of the innocent.

" In

† In many instances at *Jacksonborough*, this was carried to extraordinary lengths. It is well known a certain gentleman who is now in the present Assembly, would have been banished, and his estate forfeited, had not some friend secreted the slip of paper on which his name was inserted.

" In the city of Athens, says Sir Walter Raleigh, Hist. World.  
 " the thirty Tyrants, apprehended those banditti who were most  
 " wicked and odious to the city, and put them to death, *tho' not*  
 " *punishable by law*; which proceeding was approved by all the  
 " citizens; who considered their lewd conditions and crimes, but  
 " did not all bethink themselves, how easy a thing it is, to take  
 " away the life of innocents, by calling them disturbers of the  
 " peace, or what else they listed, *when condemnation without trial*  
 " *had been once allowed.*

" In our own time, says that judicious historian, *Salust*, when  
 " the conqueror Sylla ordered the villain Damasippus and others  
 " of his stamp to be put to death, who did not commend the deed?  
 " They said that a wicked banditti who had harrassed the State  
 " with their villainies, were put to death deservedly. But these  
 " proceedings were the beginning of a mighty calamity; for when  
 " any of Sylla's adherents coveted a *barony* or *plantation*, and at  
 " last a piece of plate or a fine coat, he took care the owner should  
 " be put down in the (confiscation list) list of the proscribed; thus  
 " they to whom the death of Damasippus was matter of joy,  
 " were a little afterwards dragged themselves to execution."

De bell. Catilini.

I have thus far endeavoured to shew that the laws and constitution of our country have been violated, the personal and civil rights of the people invaded; that the *land-mark* has been removed which points out our inheritance and right to freedom; and that we run the risque of drawing down a curse on ourselves and posterity for the cruelty and injustice of the Confiscation Law.

## VI. On the Amercement Act.

AS to the Amercement Act, every argument which I have used above, apply with equal force against it; not to speak of the injustice of stripping our citizens of their property, without *examination* or *hearing*; The Amercement Act is the most impolitic that could be devised. I insist upon it, that if it stood unrepealed, *it would do more real injury to this country than the invasion and all the ravages of the British army.* The misfortunes of the war will be soon out-grown by a young country, so fertile and full of resources as ours. But the divisions and heart-burnings which those amercements will leave behind, would turn out a bitter misfortune to us, and go as an inheritance to our children. It will irritate one half of the people against the other, and disgrace both; by the injustice done on one side, and the reproach endeavoured to be fixt on the other; many worthy citizens, and of as good families as any we have, being handed down on the journals of both houses as traitors and enemies to their country. It will also serve to keep alive the memory of the troubles of the present day, which should be buried in oblivion. Therefore the application of such laws as that of the *amercement*, can never be said to be governing a country. It is rather *distracting* it, and turning things upside down. Those men

are deprived of their property, without being so much as allowed to hear the accusation against them, contrary to the fundamental laws of the State. Can any one imagine that such extraordinary proceedings will produce no bad consequence in the community? and that all division, discontent and murmur about the matter will be soon over, as if nothing had happened? This law of itself would be sufficient to disturb the peace of the country, and alarm every thinking man in it; and he who thinks otherwise has but little knowledge of human nature.

The reader may judge by the preamble, whether the Committee who framed the Amercement Law, paid more attention to law and fact than they did civil language. "Whereas many persons in-  
"habitants of, and owing allegiance to this State (some bearing  
"high and important commissions) have withdrawn themselves  
"from the defence thereof, accepted protection, &c."

I have proved already that our government was dissolved; it did not exist, and of course those who are amerced could not withdraw from its defence: As the Republic could not give the citizen protection, which is the equivalent he receives for allegiance, he owed none, and yet the preamble insists, "they owed allegiance." We also see that "accepting protection" is stated as a high crime, though I have proved above it was not. It goes on: "And are  
"either within the lines of the enemy, or have omitted to enroll  
"themselves and perform the duties of their country, pointed out  
"and required by the Proclamation of his Excellency the Govern-  
"or, of the 27th of September, in utter contempt of the executive  
"authority, and evil example of society."

My remarks on the circumstances of the inhabitants who were within *the enemy's guards*, have, I hope, satisfied the reader that the proclamation was improper and oppressive; that those citizens could not possibly comply with it; and that remaining where they were was perfectly justifiable.

"And whereas there are others, who forgetting the social ties  
"of kindred and humanity, and regardless of the duty and alle-  
"giance they had most solemnly sworn to their country, did actu-  
"ally subscribe, and pay by themselves or agents, considerable  
"sums of money towards mounting and equipping a troop or  
"troops of cavalry, or other military force for the service of his  
"Britannic Majesty." It is a maxim of our law that the greater the crime of which any citizen is accused, the clearer should be the proof to convict him of it: Yet the preamble states those facts without any sort of proof that can be called *legal*, and in utter contempt of all law-knowledge declares the facts to be a crime, that if true, were not punishable by our laws.

In all countries overrun by an invading and victorious army, nothing more common than to raise, what is called *Contribution*, for the support of it; and in cities and civilized places, to make the matter easy to the people, or from an affectation of politeness, which soldiers of fortune can sometimes put on, with the bayonet at your breast, the thing is generally done by *subscription*; and we afford the first example of such contribution being charged as a crime.

Those in Charlestown who subscribed for the British cavalry, were some of them volunteers for raising a force against us; but I believe this was not the case with all of them; the citizens was under the yoke of a tyrant, who had a thousand ways of doing him mischief.

He had favours to ask of British commanders; a restoration of indigo, rice, cattle, or other property, was a great one that day; and to be purchased only by mortifying concessions. To such people the *subscribing to British cavalry*, was another name for *contribution*. It was done perhaps under the highest necessity and compulsion. To make that a crime therefore, by a *retrospective law*, which was none before, and condemn them to near a third of their property, was what I mentioned above, to be punishing by *ex post facto law*, and is arbitrary and unconstitutional. The amerced citizens are painted as miscreants who do not deserve to live; yet not one act charged in the preamble could be construed to be a breach of any law of South-Carolina.

As the amercement law is founded on injustice and bad policy; it is no wonder that the mode in which it is enforced, adds to the hardship of it. Three freeholders are chosen by the commissioners, to appraise those estates, without the controul or challenge of the owner: and however enormous the valuation they set, yet he must abide by it, without appeal or redress. The freeholders may be raw unexperienced men, or biased by the prejudices, malice, or revenge, peculiar to civil troubles, or misled by a thirst for speculation on the property of their neighbour. It is easy to see therefore, that injustice and oppression must be the lot of many. It is said by good judges, that some estates have been appraised at upwards of twice their real value; so that the proprietor, instead of 12 or 30 per cent. may suffer an entire confiscation of the whole. Those who have large families to bring up, and are much in debt, must be completely ruined; and in this manner are our laws and forms of justice overturned, which have been handed down as our birth-right for ages past; and the fruits of a man's toil and industry, which every good government ought to secure for the education and advancement of his children, are snatched from him in a moment.

There is something very curious in the story of the republic which was attempted in England, in the last century, after the trial and execution of Charles I. and the expulsion of his family. It is worth the reader's attention: The true republican spirit never shone with more lustre on any spot of the globe. Such was the enthusiasm of that nation, that it produced, as it were in an instant, a race of heroes, patriots, and men of letters, who all distinguished themselves in pulling down kingly government, and setting up a commonwealth.

The great Milton, Harrington, and other men of genius, employed all the charms of eloquence to cherish and support it. But their liberties under their favourite republic they did not maintain a moment. Not because the conjuncture of affairs was unfavourable; for it was quite otherwise. But the members of the new legislature, forgetting that they were young beginners in the art of governing; instead

instead of endeavouring to reconcile all parties to the republic, by a temperate administration of law and justice; set to work immediately to gratify personal malice and revenge; and pursue their adversaries, the *Royalists*, with *confiscation* and *amercement*.

Some had to avenge cruelty or insults, when in the hands of their enemies; others the burning of their houses, or to retaliate the death of their kindred; or the plunder of their property; all which mischiefs, the royal party, in the hour of success, never failed to execute.

By way of retaliation, "they were plundered, imprisoned, decimated, says an annalist, and so worried by amercements or fines, that they were forced to compound over and over, 'till at last they had nothing left."

Many of them were forced by such tyranny, to fly their country, and suffered such distress abroad, that the very gentlemen were forced to sell themselves as slaves to the Dutch, who accordingly transported them to their plantations.

The blessings of heaven could not attend scenes of such oppression. The spirit of discord went forth among the people; mutual hatred and animosity arose between neighbours; fear and apprehensions seized others, for themselves or family connections: Men had no resource or safety, but to enter into parties, form factions and cabals, to support themselves or friends. And thus oppression, hatred, malice, and vexation, seemed to have been let loose by Divine Providence, as a punishment on the nation. Their affairs at last were so entangled and distracted by the animosity of contending parties, that the tyrant Cromwell sprung up in the height of it; and the sensible part of the people were glad to submit to his usurpation, rather than bear any longer the misery of being governed by men, who set moderation and justice at defiance and who proved themselves totally incapable of any thing, but to create public and private ruin.

God Almighty has so ordered the affairs of men in this world, that a mischievous legislature, any more than a mischievous individual, can never succeed in oppression and injustice, without drawing down a curse and misfortune on itself. And should the legislature of South-Carolina, and Georgia persist in the fearful measures lately pursued, I make no ceremony to foretel, that we and they shall remain a conspicuous example with posterity, to prove, *that the people are incapable of governing themselves*. Tyranny will be furnished from our history with another new example to establish her favourite principle, "that mankind were destined by nature for slavery, and to be hewers of wood and drawers of water for one or a few."

#### VII. *The Conclusion, with Remarks to prove the Necessity of an Amnesy, or Act of Oblivion.*

THE experience of all countries has shewn, that where a community splits into a faction, and has recourse to arms, and one finally gets the better, a law to bury in *oblivion* past transactions is

is absolutely necessary to restore tranquillity. For if after a civil war, and one party vanquished, persecution was to go on; if the fury of laws and the fierce rage of passions prevailed, while the minds of men were yet fired by deadly revenge against their fallen adversaries; this would be worse than keeping up the war: it would be carrying on hostility under the shape of justice, which is the most oppressive, and of all other injustice, excites the greatest detestation, and the most violent factions and division.

Every part of Europe has had its share of affliction by usurpation, or civil war, as we have had lately; but every one of them considered an act of oblivion as the first step on their return to peace and order. This was the case in Greece and Rome, as well as in England and other places, as I shall shew by a few examples.

The cruelty of the thirty tyrants in Athens exceeded all bounds. Xenophon tells us, they destroyed more citizens in eight months than were killed in thirty years war; and what made them more formidable was their being supported by 3000 citizens. However, they were at last deposed by an armed force, under Thrasybulus, and their ruin was followed by a general amnesty. "By which order wisely made, and carefully observed, the city returned to its former quietness, says Raleigh."

"I cannot forbear observing, says Rollin, speaking of that event, the wisdom and moderation of Thrasybulus, so essential after a long continuance of domestic troubles. *This is one of the finest events in ancient history, worthy the Athenian lenity and benevolence*, and has served as a model for successive ages to good governments."

"Never had tyranny been more cruel and bloody than that which the Athenians had shaken off: Every house was in mourning: Every family bewailed the loss of some relation. It had been a series of public robbery and rapine; in which licence and impunity had authorized all manner of crimes. The people seemed to have a right to demand the blood of all accomplices in their villainies; but Thrasybulus rose above those sentiments; from the superiority of his genius, and his views of a more distinguishing policy, he foresaw that *by giving into the punishment of the guilty, eternal seeds of discord and enmity would remain and weaken the republic by domestic divisions.*"

All historians and political writers condemn the mischievous policy of pursuing the citizens with prosecutions after civil wars. Machiavel himself, tho' for violent measures on other occasions; yet strongly recommends an act of oblivion after a revolution. And he censures the conduct of the Roman republic on the expulsion of the ten tyrants, for not passing an amnesty, instead of carrying on prosecutions against those citizens who supported their tyranny.

In that republic ten of their principal citizens were entrusted with extraordinary powers; but regardless of laws or constitution, they seized on the government and freedom of the people; who, with the assistance of the army, expelled them after three years usurpation

usurpation\*. Inflamed with success and revenge, the very people who had taken the tyrant's protection, for all did it; were for putting to death the most violent and mischievous and their adherents. Machiavel's remarks on this conduct is worth noting.

"It is a very great fault in a State, says he, every day in the citizens minds to renew the memory of old wrongs done to this and that man, with new punishments, as it befel at Rome under the Decemvirate. For all the ten, and sundry other citizens were accused and condemned, so that the nobility were affrighted, thinking they would never leave off condemning them 'till they had destroyed the whole. And certainly it had produced some great commotion in the city, if Marcus Duellius the Tribune, had not passed a decree, that for a whole year it should not be lawful to accuse any citizen. Where we see how great a hurt it is in a republic, or prince, to hold their subjects minds in suspicion and fear with continual prosecutions and punishments; and without doubt a worse course cannot be taken. For men that begin to doubt of mischief in any case, provide for themselves in their danger, grow bolder and less respectful how they venture on novelties. Wherefore it is necessary never to hurt any, or the hurt that is done to do it at once, and afterwards let them enjoy some assurance that may give them cause to quiet and settle their minds." Machiavel's discourse.

Whether the necessity of a general amnesty ever occurred to the reader or not, the above observations will strike him very forcibly, as they apply so well to our present situation. However, to make this matter still clearer, I shall draw a comparison between the conduct of the British nation, on the restoration, after the grand rebellion, and of our legislature on the re-establishment of our republic in 1782.

The situation of the two countries was similar in this, that England suffered a usurpation under Cromwell, and other tyrants, and South-Carolina under the tyranny of Great-Britain: And the inhabitants of both countries, with few exceptions, submitted to the usurpers. But in other circumstances England differed from us: British tyranny prevailed in this country only about 16 months. Their officers plundered our side boards of plate, and our wardrobes of their contents, to a considerable amount; and stole, or were the death of about twenty thousand negroes. In battle and cold blood they destroyed perhaps 3000 of our citizens; and they tortured our every manlike feeling, by distressing our families, and insults to ourselves, whenever we fell into their hands. This is rating our damage pretty fairly.

But these injuries vanish into nothing, compared with what the English nation suffered in the grand rebellion. It lasted 19 years I think. The stronger party dethroned the prince, brought him

to

\* Appius was at the head of that tyranny, and his cruelty and lust are well known. Yet the proceedings against him are condemned by all historians, for he was refused a hearing and appeal before the people, agreeable to their constitution.

to a public trial, and put him to death. The heir to the crown, having been detained under various indignities a prisoner in Scotland, put himself at the head of an army; and was defeated in battle at Worcester.

Ten thousand of his adherents were made prisoners, many of whom Cromwell sold as slaves to the West-India planters. Young Charles, after the rout was hunted like a deer, and by assuming various disguises got to France. When abroad he was reduced so low that he could not command a pistole. The number of subjects destroyed on both sides is computed at half a million.

When the troubles were over, and Charles the Second was restored to the throne, he had his own injuries and the ruin of his friends, to avenge. But did he avenge those injuries? Did he dismiss his first parliament, as we did the last assembly, leaving the terrors of laws hanging over the people's heads; and resolve to send the courts of sessions through the country, to fill it with condemnations and convicts, to the disgrace and utter distress of families, and add to the list of widows and orphans? He did nothing of all this. The very first bill he passed was an act of amnesty, to settle the distractions of the nation. Had he reasoned like our politicians, he would have fallen upon confiscation, banishment and amercement; and under pretence of preventing a future rebellion, he would like us, have passed acts to exclude from votes or seats in the legislature, such as were deemed enemies to royalty. Instead of such like measures, which would have only increased the nation's misfortunes, he passed a general amnesty; out of which forty nine of the late king's judges were excepted. These had a fair and public trial, and of the whole, ten only were executed. This was all the blood shed after so furious a civil war.

I shall transcribe one healing clause of this famous \* act of amnesty, which is worthy to be remembered.

"And to the end and purpose that all names and terms of distinction, may be likewise put in utter oblivion, be it further enacted, that if any person or persons, within the space of three years next ensuing, shall presume maliciously to call or alledge, or object against any person or persons, any name or names, or other words of reproach, any way leading to revive the memory of the late differences; that then every such person offending as aforesaid, shall pay ten pounds if a gentleman, and forty shillings if of an inferior degree."

It is a maxim in politics, that if a breach be made in the constitution of a government, and it be not healed, it will prove as fatal to its freedom, as a wound that is neglected and suffered to mortify, would to the life of a man. I proved clearly that ours received a mortal one; and should the present assembly leave it *to inflame*, without applying a cure, we cease to be a free people. The remedy I speak of is lenient, all healing. *Repeal at once the late election act, the amercement law, and the confiscation act, as far as it affects those*

\* I refer any of the Gentlemen in the Assembly to the first volume of the Lords debates.

## AN ADDRESS

*those who were our citizens.*—And in order that such proceedings may not be drawn into precedent hereafter, let there be a clause, to obliterate those three acts from the journals of both houses. *Pass an act of amnesty and oblivion, with as few exceptions as possible;* allowing such as may be excluded, a day to come in and be heard; either before the court of sessions, on a fair and public trial; or should they be men whose inveteracy, power or influence may be dangerous to the State, and are not liable to punishment by our laws; let them have a hearing before the legislature on articles of impeachment. — Provided we mean that the word *Republic* should signify something more than mere sound, *pass an Act for dissolving the present Assembly.*

Every citizen cannot enjoy the rights of *election* and *representation*, according to the constitution, I hope no body will be so idle as to talk of *Liberty*. *This, and the reversal of the three acts above-mentioned*, is the measure, and the only one that can reconcile us to the friendship of each other; it will put an end to silly distinctions and faction; leave us at liberty to shake hands as brethren, whose fate it is to live together; and it will stand as a more lasting monument of our national wisdom, justice and magnanimity, than statues of brass or marble.

These are the sentiments of one who pleads not for personal indulgence. In the varieties of good and bad fortune which America has passed thro', he shared in her joys and sorrows. Though the connection with her brought him little besides the affection she inspired; though the changes in her health and appearance were often for the worst, yet it made no change in him; and neither in feeling, word, or deed, from the fidelity he pledged to her, has he deviated a moment. If he has any political sin to answer for, it is that he disdains in the hour of success, to triumph over the distress of any man who once bore the name of a fellow-citizen. And should the present publication but contribute to restore harmony to the Republic; or prevent the return of the bitter hours of heart-ache, which many an innocent man has undergone since last January; then however silent or obscure my walk in life, I shall enjoy a sweet and secret pleasure of having done some service to my country.

CASSIUS.

6 AP 53  
Charlestown, 14th January, 1783.

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